

ALLSTATE SETTLEMENT CORPORATION and ALLSTATE LIFE INSURANCE COMPANY,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	No. 06-4989
	:	
RAPID SETTLEMENTS, LTD. and ANDINO WARD,	:	
	:	
Defendants.	:	
	:	

¹ On March 5, 2007, a default judgment was entered against Ward, however, Rapid filed a motion to reconsider the default judgment. Allstate did not oppose this motion. On April 11, 2007, this Court granted Rapid's motion and thereby set aside the default judgment against Ward.

Settlement Corporation. To fund this obligation, Allstate Settlement Corporation purchased an annuity from Allstate Life Insurance Company. Thus, pursuant to the City's assignment, Allstate was responsible for making the periodic payments to Ward.

Rapid is a structured settlement factoring company that purchases from various personal injury claimants the right to receive the claimants' future structured settlement payments in exchange for an immediate lump sum payment. On August 25, 2004, Ward entered into a transfer agreement ("Original Transfer Agreement") with Rapid whereby Ward assigned to Rapid his interest in a specific number of the periodic payments under his structured settlement agreement. In exchange, Rapid agreed to pay Ward a lump sum payment of \$32,500.

The Original Transfer Agreement between Ward and Rapid contained a preliminary clause stating that:

This Transfer Agreement is subject to court approval. A court must approve Assignor's [Ward's] sale, assignment, and transfer to Rapid Settlements of the Assigned Payments before such payments can be transferred and the Assignment Price . . . paid to Assignor [Ward]. The Final Order shall state that the court at least has made all findings required by the applicable law, and that Annuity Owner and Annuity Issuer [Allstate] are authorized and directed to pay the Assigned Payments to Rapid Settlements, its successors, and or assigns. Assignor [Ward] and Rapid Settlements agree to proceed in good faith to obtain court approval of this Transfer Agreement.

(Allstate's Mot. Summ. J. Ex. B). Court approval of this agreement is required by Pennsylvania's Structured Settlement Protection Act ("Protection Act"). 40 Pa. Cons. Stat. § 4003(a). The Original Transfer Agreement also included an arbitration clause to resolve all disputes arising out of this contract. (Id.).

In November 2004, Rapid sought the statutorily required court approval of the Original Transfer Agreement in the Court of Common Pleas of Montgomery County. (Id. Ex. C). On or

about November 15, 2004, Allstate learned that J.G. Wentworth S.S.C. Limited Partnership had previously purchased some of the payments that Rapid sought to purchase. Rapid agreed to postpone the hearing with regard to court approval and amended the Original Transfer Agreement to exclude the periodic payments due to Wentworth. Accordingly, on or about December 3, 2004, Ward entered into an amended transfer agreement (“Amended Transfer Agreement”) with Rapid. (Id. Ex. D). Under the Amended Transfer Agreement, the amount of the payments changed, but the provisions stated above from the Original Transfer Agreement remained. Rapid then sought court approval of this Amended Transfer Agreement in the Court of Common Pleas of Montgomery County, Pennsylvania. That court denied Rapid’s petition for approval of the Amended Transfer Agreement.

On or about March 21, 2005, Rapid filed a demand for arbitration against Ward in a Texas state court for breach of contract. On April 18, 2005, Ward entered into another Transfer Agreement (“Second Amended Transfer Agreement”) with Rapid. (Id. Ex. F). This Second Amended Transfer Agreement sought to transfer the same payments as the Amended Transfer Agreement. The only difference is with regard to the preliminary clause of the agreement. As stated above, the Original Transfer Agreement’s and the Amended Transfer Agreement’s preliminary clauses stated that the agreement is subject to “court approval.” In the Second Amended Transfer Agreement, the preliminary clause states that:

This Transfer Agreement arises out of the settlement of a breach of contract claim by Assignee [Rapid] against Assignor [Ward]. Consummation of this Transfer Agreement is subject to both a favorable arbitrator’s award and court confirmation of such. The arbitrator and a court must approve Assignor’s [Ward’s] sale, assignment, and transfer to Rapid Settlements of the Assigned Payments before such payments can be transferred and the Assignment Price . . . paid to Assignor [Ward]. The Final Order shall state that both the arbitrator and the court at least

have made all findings required by applicable law and that Annuity Owner and Annuity Issuer [Allstate] are authorized and directed to pay the Assigned Payments to Rapid Settlements, its successors, and, or assigns. Assignor [Ward] and Rapid Settlements agree to proceed in good faith to obtain the arbitrator's award and court confirmation of such award approving this Transfer Agreement.

(Id.). On April 23, 2005, Allstate received notice of the arbitration proceedings. (Rapid's Resp. to Allstate's Mot. Summ. J. Ex. F). Allstate claims that it objected to Rapid's demand for arbitration and informed Rapid via email that:

Briefly stated, this petition [for arbitration] appears to be an effort to seek approval of a factoring transaction that has already been denied by a Pennsylvania court. Kindly be advised that Allstate does not believe that such an approval would be effective (under Section 5981 or any potentially applicable transfer act). Accordingly, Allstate would not be compelled to honor such approval.

(Allstate's Compl. ¶ 23). Nevertheless, Rapid proceeded to arbitration with Ward. On or about May 23, 2005, Mr. Bryan Coleman, the arbitrator, entered a First Arbitration Award finding Ward in breach for, among other things, refusing to honor the right of first refusal by failing to return monies advanced to him pending the entry of court approval. (Allstate's Mot. Summ. J. Ex. G). Pertinent parts of this First Arbitration Award state:

It is FURTHER ORDERED that [Allstate is] hereby directed to deliver and make payable to Transferee, its successors and/ or assigns, as they become due, the following payments under the Annuity Contract No. 90722217 with Ward, regardless of whether Ward is living . . .

ORDERED that [Allstate] shall change the designated beneficiary under the annuity for the Assigned Payments to RSL-3B-1L, Ltd. and no person or entity other than Rapid or Transferee shall have the authority . . . to change the beneficiary for the Assigned Payments. It is further

ORDERED that Rapid shall move to enter this order with the Texas courts at its own expense, with Ward cooperating in same. Thereafter Ward is directed to cooperate with Rapid's attorneys to domesticate said Texas judgment in Pennsylvania and, if Allstate and Rapid so requests, to renote and rehear this matter in Pennsylvania.

(Id.).

On June 9, 2005, Rapid obtained a Final Judgment in the County Civil Court at Law Number 4, Harris County, Texas confirming the First Arbitration Award and approving the Second Amended Transfer Agreement. (Id. Ex. H). In July 2005, Rapid filed a Notice of Entry of Foreign Judgment in the Court of Common Pleas in Montgomery County, Pennsylvania domesticating the Final Judgment. (Id. Ex. I). On July 29, 2005, Rapid sent notice of this judgment to Allstate. (Rapid's Resp.to Allstate's Mot. Summ. J., Ex. G). According to Allstate, its counsel again advised Rapid that Allstate would not honor the First Arbitration Award and the Final Judgment. Allstate also requested that Rapid re-petition a Pennsylvania court to obtain court approval pursuant to the Protection Act.

On May 12, 2006, as Allstate requested, Rapid filed a petition for approval of the Second Amended Transfer Agreement in the Court of Common Pleas of Montgomery County. On September 19, 2006, that court denied the petition upon a finding that the transfer was not in Ward's best interest. (Allstate's Mot. Summ. J. Ex. K). On October 9, 2006, Rapid sent Allstate a notice of another arbitration hearing in Texas. (Id. Ex. L). Allstate, once again, advised Rapid that it was not a party to the arbitration and would not honor any forthcoming arbitration award. (Id., Ex. M). On November 15, 2006, a Second Arbitration Award was entered against Ward. (Id. Ex. N).

On November 13, 2006, a few days prior to the Second Arbitration Award being entered, Allstate commenced this present action against Rapid and Ward seeking a declaratory judgment and an injunction. Allstate claims that Rapid is trying to circumvent the court approval requirement of the Protection Act. Allstate argues that Rapid is trying to use the First Arbitration

Award and the Final Judgment confirming that Award as a way of effectuating the Second Amended Transfer Agreement despite the absence of court approval. Allstate is seeking declaratory and injunctive relief as to its rights with regards to the Second Amended Transfer Agreement, the First and Second Arbitration Awards, and the Final Judgment.

II. SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and ‘the moving party is entitled to judgment as a matter of law.’” Hines v. Consol. Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). The inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of N. Am. Inc., 974 F.2d 1358, 1362 (3d Cir. 1992). “A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be ‘genuine,’ i.e., the evidence must be such ‘that a reasonable jury could return a verdict in favor of the non-moving party.’” Compton v. Nat’l League of Prof’l Baseball Clubs, 995 F. Supp. 554, 561 n.14 (E.D. Pa. 1998), aff’d, 172 F.3d 40 (3d Cir. 1998) (citations omitted). Once the moving party has produced evidence in support of summary judgment, the non-moving party must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates that there is a genuine issue of fact for trial. See Big Apple BMW, at 1362-63. Summary judgment must be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential

to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

III. DISCUSSION

Allstate's Motion for Summary Judgment is granted because: (1) the transfer agreements between Rapid and Ward have not satisfied the court approval requirement of the Protection Act; (2) the two Arbitration Awards cannot be enforced against Allstate because Allstate is not bound to the arbitration agreement between Rapid and Ward; and (3) Rapid's use of an arbitration award and court confirmation of the arbitration award circumvents this court approval requirement. Thus, Allstate is awarded a declaratory judgment and an injunction.²

A. The Transfer Agreements Lack Court Approval

The transfer agreements (Amended Transfer Agreement and Second Amended Transfer Agreement) encompassing the assignment of Ward's structured settlement payments to Rapid are ineffective because none of them have received court approval. Under the Protection Act,

“[n]o transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment to any transferee of structured settlement payment rights unless the payee has filed a petition requesting such transfer and the petition has been granted by final order or decree of a court of competent jurisdiction.”

40 Pa. Cons. Stat. § 4003(a). One of the reasons for the court approval requirement is to ensure that the transfer is in the best interests of the payee. Id. at (a)(3). Here, the petitions for court approval of the Amended Transfer Agreement and of the Second Amended Transfer Agreement

² It is important to note that this Court changed some of the wording of the declaratory relief and the injunction compared to the wording provided by Allstate in its Motion and proposed Order. The reason for doing this is to have the declaratory relief and the injunction apply narrowly and specifically to this case and not to address anything more than necessary.

were both denied by Pennsylvania courts. Without court approval the transfer is not effective and Allstate cannot be forced to make the payments to Rapid instead of Ward. Thus, the assignment between Rapid and Ward is unenforceable against Allstate.³

B. Allstate is not bound by the Arbitration Awards

Rapid obtained two Arbitration Awards against Ward. These Awards find, *inter alia*, that the transfer agreements between Rapid and Ward meet all the requirements of the Protection Act and order that Allstate is required to make the structured settlement payments to Rapid instead of Ward pursuant to the transfer agreements. However, Allstate is not bound to these Arbitration Awards because it was not a party to the arbitration agreement between Rapid and Ward and cannot be bound under any traditional principle of contract or agency law.

“Arbitration is strictly a matter of contract. If a party has not agreed to arbitrate, the courts have no authority to mandate that [it] do so.” CTF Hotel Holdings, Inc. v. Marriott Int’l, Inc., 381 F.3d 131, 137 (3d Cir. 2004) (quoting Bel-Ray Co. v. Chemrite, 181 F.3d 435, 444 (3d

³ Allstate also raises the possibility that the assignment is void because a contract between those two parties never existed. Allstate argues that court approval was a condition precedent to the formation of the transfer agreement. This issue need not be addressed because it is sufficient for defining Allstate’s rights that this Court deem the transfer agreement unenforceable against Allstate due to the lack of court approval. Courts have disagreed as to whether the court approval requirement is a condition precedent to the contract formation or whether it is just a condition precedent to obligations to make the assignment of the payments. In Symetra Life Ins. Co. v. Rapid Settlements Ltd., No. 05-3167, 2007 U.S. Dist. LEXIS 1985, *65 (S.D. Tex. Jan. 10, 2007), the U.S. District Court for the Southern District of Texas held that “[s]tate-court approval is a condition precedent to Rapid Settlement’s obligation to pay the assignment price and to the annuitant’s ability and obligation to make the assignment, but not a condition precedent to the existence of the contract itself.” On the other hand, the Court of Appeals of Texas, Ninth District, Beaumont, has stated that “court approval is a condition precedent to the formation of the contract.” In re Rapid Settlements Ltd. v. BHG Structured Settlements, Inc., 202 S.W.3d 456, 458 (Tex. Ct. App. 2006). In addition, a New York Supreme Court case, CNA Structured Settlements, Inc. & Cont’l Assurance Co. v. Rapid Settlements, Ltd. & Willie T. Lawrence, No. 2006-7751, N.Y. Supreme Ct, County of Onondaga, Feb. 28, 2007, held that a transfer agreement is void if the court approval requirement has not been met. (Allstate’s Reply Ex. A). Nevertheless, the transfer agreement between Rapid and Ward is unenforceable against Allstate because the statutory court approval requirement has not been met. This Court need not get into any further dispute as to the existence or validity of this agreement. The fact that there was no court approval alone prevents it from being enforced.

Cir. 1999)). “A nonsignatory cannot be bound to arbitrate unless it is bound ‘under traditional principles of contract and agency law’ to be akin to a signatory of the underlying agreement.”

E.I. DuPont de Nemours & Co. v. Rhona Poulenc Finber & Resin Intermediates, S.A.S., 269 F.3d 187, 194-95 (3d Cir. 2001); In re Prudential Ins. Co., 133 F.3d 225, 229 (3d Cir. 1998).

For example, courts have been willing to apply third party beneficiary law to bind nonsignatories.

Id. Courts have also used the following theories to bind nonsignatories to arbitration agreements:

(1) incorporation by reference, (2) assumption, (3) agency, (4) veil-piercing/ alter ego, and (5)

estoppel. Trippe Mfg. Co. v. Niles Audio Corp., 401 F.3d 529, 532 (3d Cir. 2005); de Nemours, 269 F.3d at 195.

Allstate argues that it is a nonsignatory to the arbitration agreement between Rapid and Ward and thus is not bound by the Arbitration Awards. Rapid argues that Allstate is bound because it is in privity with Ward and has indistinguishable interests from those of Ward’s.

However, the cases cited by Rapid, stating that a nonsignatory is bound when it has related and congruent interests to the principals of the litigation, all concern a nonsignatory that is bound under traditional contract and agency principles that are not present in this case. See Nauru

Phosphate Royalties, Inc. v. Drago Daic Interests, Inc., 138 F.3d 160, 165-67 (5th Cir. 1998)

(binding nonsignatories that were third-party beneficiaries); Paiewonsky v. Sharp Properties, Inc.,

998 F.2d 145, 155 (3d Cir. 1993) (binding subtenant where head tenant was signatory); Pritzker

v. Merrill Lynch, 7 F.3d 1110,1122 (3d Cir. 1993) (binding agents and entities related to

signatories); UFCW, Local 464A v. Foodtown, inc., 317 F. Supp. 2d 522, 527-528 (D.N.J. 2004)

(binding parent corporation and its subsidiary). Allstate is merely the annuity holder of Ward’s structured settlement, which does not fall into any of theories that bind nonsignatories.

Therefore, the arbitrator had no power to bind Allstate and the First and Second Arbitration Awards cannot be enforced against Allstate.⁴

C. The Arbitration Awards and Final Judgment circumvent the Protection Act

Rapid's use of arbitration and court confirmation of the arbitration award circumvented the Protection Act. In the First Arbitration Award, the arbitrator found that the Amended Transfer Agreement and the Second Amended Transfer Agreement "are valid, binding and enforceable agreements of the signatories thereto and the parties therein and were executed in contemplation of a transfer of structured settlement payment rights under the Pennsylvania Structured Settlement Protection Act." (Allstate's Mot. Summ. J. Ex. G). He also found that the transfer of the payments "complies with all statutory requirements of the [Protection] Act and does not contravene any applicable law." (*Id.*). In the Second Arbitration Award, the arbitrator once again ordered Allstate to make the payments to Rapid finding that:

[Allstate's interests] are in the form of a stakeholder in that [Allstate] acknowledged owing the Assigned Payments to Ward without offset or counterclaim or reduction of any sort whatsoever. This action is simply to determine who is entitled to and should receive the Assigned Payments. The Arbitrator finds that [Allstate] will bear no relevant or material burden whatsoever by changing the address on its computer records and paying the monies as ordered herein to Rapid's assignee rather than to Ward, all as such payments come due. The arbitrator finds that the obligations imposed upon [Allstate] already exist under applicable state law and are merely ministerial in nature.

⁴ Rapid also argues that this matter is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2, et seq., and the Protection Act's mandate of court approval improperly restricts the application of arbitration. According to Rapid, the Protection Act cannot be used as a way to undercut the enforceability of an arbitration agreement. Rapid is essentially arguing that the FAA preempts the Protection Act. However, Pennsylvania's Protection Act does not prohibit arbitration let alone even mention the issue of arbitrability. *See* 40 Pa. Cons. Stat. §§ 4001-4009. Nothing in this statute prohibits parties from including an arbitration provision in a transfer agreement. *Id.* "Preemption would only occur if the state statutes prohibited arbitration; and the protection acts do not." *Symetra*, 2007 U.S. Dist. LEXIS 1985 at *70. Moreover, the court approval required by the Act is of the transfer agreement, not of the arbitration provision within it. *Id.* at *73; *In re Rapid Settlements*, 202 S.W.3d at 460. Therefore, the FAA does not preempt the court approval requirement of the Pennsylvania Protection Act.

(Id. Ex. N). These findings and orders of the arbitrator are outside of his powers and cannot be enforced against Allstate because they ignore the Protection Act's court approval requirement that must be satisfied before any transfer of structured settlement payments are paid.

In Symetra Life Ins. Co. v. Rapid Settlements, Ltd., Judge Lee H. Rosenthal, U.S. District Court for the Southern District of Texas, addressed a parallel case involving Rapid and Symetra Life Insurance Co., another annuity company. No. 05-3167, 2007 U.S. Dist. LEXIS 1985 (S.D. Tex., Jan. 10, 2007). In that case, as is here, the annuity company contended that Rapid's use of arbitration to effectuate a transfer of structured settlement payment rights in the absence of the statutorily required court approval contravened the state protection act. Id. at *66. Rapid argued in response, as it does here, that the damages it seeks in arbitration are for breach of contract and the arbitration's purpose is not to effectuate the transfer. Id. Rapid argues that an appropriate remedy for that breach can include "a garnishment or turnover of an annuitants' periodic payments or assignment of such." (Rapid's Resp. to Allstate's Mot. Summ. J. 17).

Judge Rosenthal held that the effect of the arbitration award "in most cases [was] to enforce the transfer agreement without the court approval required by the state protection statutes." 2007 U.S. Dist. LEXIS 1985 at *66. This Court agrees with Judge Rosenthal's reasoning. While the arbitration arose out of Ward's supposed breach of contract, the remedy installed by the arbitrator was for Allstate to make the payments to Rapid instead of Ward. The arbitrator was essentially ordering the transfer of Ward's structured settlement payments despite the fact that Pennsylvania state courts have explicitly denied court approval of that transfer. Therefore, this remedy was nothing more than a circuitous way for Rapid to get the transfer of payments to occur without the court approval requirement ever being satisfied. Rapid cannot

accomplish through arbitration what it could not do through the proper channels of court approval under the Protection Act.

Moreover, an arbitration award and a final judgment confirming that award cannot serve as a method to obtain “court approval” of the transfer pursuant to the Protection Act. An arbitrator does not have the power to find that the transfer “complies with all statutory requirements of the [Protection] Act and does not contravene any applicable law,” as he did in this present case. (Allstate’s Mot. Summ. J. Ex. G). As held in Symetra, a final judgment confirming an arbitration award “clearly does not equate to the statutorily required court approval of the proposed transfer. 2007 U.S. Dist. LEXIS 1985, at *67. Therefore, by using arbitration and subsequent state court confirmation proceeding to effect the transfer to Rapid of Ward’s structured settlement payments, in the absence of court approval under the Protection Act, Rapid is violating that Act. See id. Thus, besides the Arbitration Awards, the Final Judgment confirming the First Arbitration Award cannot be enforced against Allstate because the court approval requirement is not satisfied.⁵ See id.

D. Declaratory Judgment and Injunction

In conclusion, Allstate’s Motion for Summary Judgment is granted. Allstate is entitled to

⁵ Another case illustrating Rapid’s use of arbitration to circumvent the court approval requirement is In re Rapid Settlements, No. 14-06-00698, 2007 Tex. App. LEXIS 2399 (Tex. App. Mar. 29, 2007). In that case, Rapid and Mr. Simmie King entered into a structured settlement transfer agreement. A Georgia court denied approval of that agreement because the transfer was not in Mr. King’s best interests. Id. at *3-4. Mr. King then decided to enter a second transfer agreement with a different factoring company. Id. at *4. This second transfer agreement was approved by a Georgia court. Id. Rapid then asserted a right of first refusal to Mr. King’s future payments and initiated arbitration. Id. Mr. King and the second factoring company sought to prevent arbitration. Id. The court in this case stated that Rapid “cannot accomplish in arbitration that which a Georgia court has already refused to allow as contrary to Mr. King’s interests.” Id. at *11. Citing Symetra, the court continued by stating that “Rapid cannot use arbitration proceedings to avoid the applicable state structured settlement protection acts by obtaining arbitration awards to effect a transfer of structured settlement future payment rights.” Id. Thus, this case is just another example of Rapid improperly using arbitration to obtain the transfer of payments even though its transfer agreements fail to be approved by state courts pursuant to the protection acts.

the following declaratory relief:

- (1) the purported assignment between Rapid and Ward, the First and Second Arbitration Awards, and the Final Judgment are unenforceable against Allstate;
- (2) Rapid must comply with all applicable state structured settlement protection acts in connection with the transfer of any structured settlement annuities incurred by Allstate Settlement Corporation and/ or owned by Allstate Life Insurance Company;
- (3) Allstate is not obligated to make any payments to Rapid, or any of its affiliates, absent court approval of any transfer agreement in accordance with the applicable state structured settlement protection act;
- (4) Allstate is not obligated to perform any obligation not contained within any contract with a payee, or to examine its records, answer any question, or furnish any information to Rapid with respect to any proposed transfer to Rapid except as expressly provided in any applicable protection act; and
- (5) Allstate shall make all future payments that are subject to the Amended Transfer Agreement to Andino Ward at his residential address.

Allstate is also entitled to injunctive relief. This Court enjoins Rapid from bringing or pursuing any arbitration between itself and any Allstate annuitant, if that arbitration, directly or indirectly, effects a transfer of structured settlement payment rights owed to an Allstate annuitant or if that arbitration compels Allstate to make payments to Rapid with respect to such Allstate annuitants unless the applicable state court has approved the transfer pursuant to the applicable state structured settlement protection act.

An appropriate Order follows.

ALLSTATE SETTLEMENT	:	CIVIL ACTION
CORPORATION and ALLSTATE	:	
LIFE INSURANCE COMPANY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 06-4989
	:	
RAPID SETTLEMENTS, LTD. and	:	
ANDINO WARD,	:	
	:	
Defendants.	:	
	:	

AND NOW this 8th day of May, 2007, upon consideration of the Motion for Summary Judgment of Plaintiffs Allstate Settlement Corporation and Allstate Life Insurance Company, and the Responses and Replies thereto, it is hereby **ORDERED** that the Plaintiffs' Motion for Summary Judgment (Doc. No. 20) is **GRANTED**.

/s/ Robert F. Kelly
ROBERT F. KELLY, Sr. J.